

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC.,  
dba TODAY'S HEALTH and DIRECT  
FULFILLMENT, ITV DIRECT INC., dba  
DIRECT FULFILLMENT, DONALD W.  
BARRETT, HEALTHY SOLUTIONS LLC  
dba DIRECT BUSINESS CONCEPTS,  
HEALTH SOLUTIONS INC.,  
ALEJANDRO GUERRERO, MICHAEL  
HOWELL, GREG GEREMESZ, TRIAD ML  
MARKETING, INC., KING MEDIA, INC.,  
and ALLEN STERN,

Defendants.

Civil Action No. 04-CV-11136-GAO

Judge George O'Toole

**HEALTHY SOLUTIONS CROSS-  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

HEALTHY SOLUTIONS, LLC dba DIRECT  
BUSINESS CONCEPTS, a California limited  
liability company;

Cross Claimant,

v.

ITV DIRECT, INC., a Massachusetts corporation;  
DIRECT FULFILLMENT LLC, a Massachusetts  
limited liability company, and DOES 1-10,  
inclusive,

Cross Defendant..

### JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, in that this action is between citizens of different states and the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and independently, pursuant to 28 U.S.C. § 1367.

2. This Court has personal jurisdiction over the cross defendant in that the claims all arise out of business that the defendant transacted in Massachusetts.

### VENUE

3. Venue is appropriate in this judicial district pursuant to 28 U.S.C. 1391 in that the corporate defendant is subject to personal jurisdiction in this Judicial District and substantial events giving rise to the Cross Claimant's claims occurred in this Judicial District.

### PARTIES

4. The Cross Defendant ITV Direct, Inc. ("ITV"), is a Massachusetts corporation with a principal place of business at 100 Cummings Center, Suite 506E, Beverly, Massachusetts.

5. The Cross Claimant Healthy Solutions, LLC, is a California limited liability company with a principal place of business at 9528 Mirimar Road, No. 100, San Diego, California which distributes "Supreme Greens" a nutritional supplement containing herbs, grasses and other ingredients to enhance good health.

6. Cross Claimant Health Solutions Inc. is a California corporation that owns the mark "Supreme Greens."

7. Cross Claimant Alejandro ("Alex") Guerrero, a California resident, developed the proprietary, trade secret formula for Supreme Greens and is an agent of Healthy Solutions LLC.

8. Cross Claimants Michael Howell and Greg Geremesz are both California residents and officers of Healthy Solutions LLC and Health Solutions Inc.

#### FACTS

9. ITV, among other things, markets and distributes various healthcare related products to individual and retail consumers.

10. On or about April 4, 2003, Cross Claimant Healthy Solutions LLC entered into a Distribution Agreement with ITV, a Massachusetts's television infomercial producer, Cross Defendant ITV DIRECT, INC. was granted exclusive right to the "direct response telemarketing channel," in other words, infomercials for Supreme Greens. A copy of the Distributorship Agreement is attached as Exhibit A.

11. As, part of the Distributorship Agreement, Cross defendant agreed to indemnify and hold Cross Claimants harmless as follows:

"¶24. Indemnification

". . . Distributor [ITV] agrees upon demand to defend, indemnify and hold harmless Manufacturer, its officers, directors, employees, shareholders and affiliates from any and all claims, lawsuits, actions and proceedings in any court or by any governmental unit arising out of or relating to Distributor's market, sales and distribution efforts pertaining to the Product and/or any post-delivery alteration or modification to the Product, including physical damage after Distributor has accepted delivery."

12. Pursuant to the Agreement, ITV produced the first of two infomercials promoting "Supreme Greens with MSM" in April 2003, at ITV's studio in Beverly, Massachusetts. The infomercials were written, directed, edited and produced by ITV.

13. Upon information and belief, the FTC raised objections to the content of the first infomercial. The FTC did not contact Cross Claimants directly about the content of the Supreme Greens infomercial at that time.

14. When Healthy Solutions LLC asked ITV about the FTC's possible objections to the content of the infomercials, as communicated by ITV, ITV assured Cross Claimants that the FTC's concerns had been addressed by making a new infomercial.

15. The FTC's Complaint herein, commenced by the FTC *inter alia* for alleged misrepresentations in the production, promotion and dissemination of the infomercials followed.

16. As a result of the FTC's Complaint, Cross Claimants are incurring and will continue to incur expenses and damages, which are the responsibility of Cross Defendant.

17. In breach of their indemnification obligations, the Cross Defendant has refused to indemnify Cross Claimants for any damages incurred as a result of the FTC Complaint and proceedings..

18. As a result of the defendants' breach of their indemnification obligation, Cross Claimants have suffered and will continue to suffer damages in an amount to be proven at trial, but in any event not less than \$120,000.


PRAYER FOR RELIEF

WHEREFORE, the CROSS CLAIMANTS request this Court to:

- A. Determine the damages sustained by the Cross Claimants and enter judgment against the Cross Defendant in that amount together with interest and costs, and reasonable attorney fees as allowed by law;
- B. Find that Cross Defendants must indemnify and hold harmless Cross Claimants from any claims, lawsuits, actions or proceedings commenced by any governmental agency, including the FTC; and
- C. To grant such other and further relief deemed appropriate and just.

Respectfully submitted,  
HEALTHY SOLUTIONS, LLC,  
**HEALTH SOLUTIONS, INC.,**  
ALEJANDRO GUERRERO,  
MICHAEL HOWELL,  
GREG GEREMESZ

By its and their attorneys,

  
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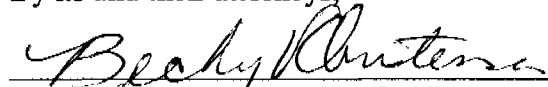
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DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand trial by jury of all issues so triable in this action pursuant to Federal Rules of Civil Procedure 38(a).

Respectfully submitted,  
HEALTHY SOLUTIONS, LLC,  
**HEALTH SOLUTIONS, INC.,**  
ALEJANDRO GUERRERO,  
MICHAEL HOWELL,  
GREG GEREMESZ  
By its and their attorneys,

  
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CERTIFICATE OF SERVICE

I hereby certify that on <sup>July 29</sup>~~July 29~~, 2004, a copy of foregoing HEALTHY SOLUTIONS CROSS-COMPLAINT was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

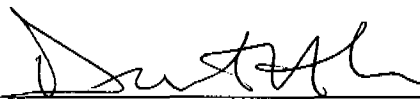
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